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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS E. KEPKE,

Defendant.

Criminal No. 3:21-CR-00155-JD

STIPULATION AND [PROPOSED] ORDER
AUTHORIZING DISCLOSURE OF
TAXPAYER RETURN INFORMATION
AND PROTECTIVE ORDER

With the agreement of the parties, the Court enters the following Order:

Upon receipt of a discovery request, the United States will produce documents and other materials pertaining to Defendant and the charged offenses to defense counsel. The discovery to be provided by the government in this case will include sensitive proprietary, financial, banking, and tax return information, including the following categories of evidence (collectively, "Protected Information"):

1. Personal Identifying Information of individuals (other than his or her name), including the person's date of birth, social security number, residence or business address, telephone numbers, email addresses, driver's license number, professional license number, family

- 1 members names, or criminal histories (“Personal Identifying Information”);
- 2 2. Financial information of individuals or businesses, including bank account numbers, credit or
- 3 debit card numbers, account passwords, contact information, and taxpayer identification
- 4 numbers, but not including parties’ names (“Financial Information”);
- 5 3. Medical records or other patient information of individuals covered by the Health Insurance
- 6 Portability and Accountability Act of 1996 (HIPAA) (“Medical Information”); and
- 7 4. Tax Return Information, as defined by Title 26, United States, Code, Section 6103(b)(1) and
- 8 (2), pertaining to individuals and entities other than Defendant.

9 To ensure that Protected Information is not subject to unauthorized disclosure or misuse,

10 **IT IS HEREBY ORDERED** that, pursuant to Fed. R. Crim. P. 16(d)(1), Defendant, defense
 11 counsel of record, their investigators, assistants, and employees, as well as any experts or consultants
 12 retained to assist with the preparation of the defense in this case (collectively, “the defense team”), may
 13 review all discovery provided by the government in unredacted form. However, no member of the
 14 defense team may provide any person who is not a member of the defense team with copies of, or permit
 15 any person who is not a member of the defense team to make copies of, or have unsupervised access to,
 16 any discovery provided by the government that contains Protected Information, unless the Personal
 17 Identifying Information, Financial Information, and/or Medical Information has first been **entirely**
 18 **redacted** from the discovery materials.

19 All members of the defense team shall be provided a copy of this Order, and shall initial and date
 20 the Order reflecting their agreement to be bound by it, before accessing any discovery provided by the
 21 government.

22 The discovery provided by the government may only be used for the specific purpose of
 23 preparing or presenting a defense in this matter, unless specifically authorized by the Court.

24 This Order shall also apply to any copies made of any materials covered by this Order.

25 **IT IS FURTHER ORDERED** that discovery provided by the government that includes tax
 26 return information of third parties, as defined by 26 U.S.C. 6103(b)(1) and (2), is provided pursuant 26
 27 U.S.C. 6103(h)(4). Defendant and his counsel shall maintain the confidentiality of all tax return
 28 information provided by the government in discovery, other than material that clearly pertains to

Defendant and does not contain tax return information regarding any other individual or entity, in accordance with 26 U.S.C. 6103(a) and this Order.

IT IS FURTHER ORDERED that neither Defendant nor any member of the defense team shall provide copies of any discovery provided by the government – if the material constitutes or contains Protected Information within the meaning of this Order – to any person who is not a member of the defense team, or make any public disclosure of the same, other than in a court filing, unless specifically authorized by the Court. No provision of this Order shall prevent defense counsel from reviewing discovery provided by the government with potential trial witnesses, as necessary to prepare for trial. If a party files a pleading that references or contains or attaches Protected Information, that filing must be under seal.¹

IT IS FURTHER ORDERED that defense counsel shall return materials subject to this Order (including any copies) to the United States within 28 days after whichever event occurs last in time: dismissal of all charges against Defendant; Defendant's acquittal; Defendant's sentencing; or the conclusion of any direct appeal. After the United States receives documents and materials subject to this Order, it shall maintain those documents and materials until the period for filing a motion under 28 U.S.C. § 2255 has expired. After the statutory period for filing a motion under 28 U.S.C. § 2255 has expired, the United States is free to destroy documents and materials subject to this Order. If Defendant is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the United States will provide counsel with the documents and materials subject to this Order under the terms of this Order.

Defendant's attorney in any motion under 28 U.S.C. § 2255 shall return the documents and materials subject to this Order within 28 days after the district court's ruling on the motion or 28 days after the conclusion of any direct appeal of the district court's order denying the motion, whichever is later. This stipulation is without prejudice to either party applying to the Court to modify the terms of any protective order. This Court shall retain jurisdiction to modify this Order upon motion of either party

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¹ This Order authorizes such filings under seal and the parties are not required to seek additional authorization from the Court to do so.

1 even after the conclusion of district court proceedings in this case.

2 The undersigned Assistant United States Attorney certifies that he has obtained approval from
3 counsel for the defendant to file this stipulation and proposed order.

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5 **IT IS SO STIPULATED.**

6 DATED: May 20, 2021

STEPHANIE M. HINDS
Acting United States Attorney

7
8 s/ Michael G. Pitman
MICHAEL G. PITMAN
Assistant United States Attorney
9 COREY J. SMITH
Senior Litigation Counsel

10 Attorneys for United States of America

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13
14 s/ Grand P. Fondo
GRANT P. FONDO

15 Specially Appearing for Defendant Carlos E. Kepke

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18 **IT IS SO ORDERED.**

19 DATED:

THE HON. JAMES DONATO
United States District Judge